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SMALL BUSINESS PROGRAM GUIDE FOR GOVERNMENT AND INDUSTRY

ARMY MATERIEL COMMAND



“It is the declared policy of Congress that the government should aid, counsel, assist, and protect, insofar as is possible, the interests of small-business concerns in order to preserve free competitive enterprise, to ensure that a fair proportion of the total purchases and contracts for property and services for the government be placed with small business enterprises, to ensure that a fair proportion of the total sales of government property be made to such enterprises, and to maintain and strengthen the overall economy of the nation.”



SMALL BUSINESS = SOMETHING BIG

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This Guide was developed by the AMC Small Business Program Committee. The Guide will be updated annually and supersedes all previous handouts.

Vision Statement:

**ACHIEVING OPTIMUM SMALL BUSINESS PARTICIPATION BY
SEEKING SMALL BUSINESS SOLUTIONS FIRST**

SMALL BUSINESS PROGRAM GUIDE FOR GOVERNMENT AND INDUSTRY

PURPOSE OF GUIDE: This handout is for use by Small Business Specialists to introduce technical, procurement, and industry personnel to the Small Business Program.

SMALL BUSINESS U. S. STATISTICS

Small firms:

- **Represents more than 99.7% of all employers and employ more than half of all private sector employees**
- **Pay 44.5% of total U.S. private payroll, generate 60% to 80% of net new jobs annually, and create more than 50% of non-farm private gross domestic product**
- **Supplied 22.8% of the total value of federal prime contracts (about \$50 billion) in FY 2001 and are employers of 39% of high tech workers such scientists, engineers, and computer workers**
- **Represents 97% of all U.S. exporters.**

CONGRESSIONAL PHILOSOPHY

- **Utilize the annual federal budget to promote Small Business Programs**
- **Promote economic stability through the use of Small Businesses to enhance the nation's defense**
- **Preserve and promote free enterprise**
- **Maintain a viable industrial base**
- **Ensure competitive economic climate**
- **Provide opportunities for entrepreneurship and inventiveness**

SMALL BUSINESSES PLAY IN THE ARMY'S SUSTAINING BASE IN VITAL AREAS

- **Military Readiness**
- **Economic Security**
- **Advanced Technology**

KEY SMALL BUSINESS LEGISLATION/HISTORY

Reconstruction Finance Corporation (RFC): RFC was created by President Herbert Hoover in 1932 to alleviate the financial crisis of the Great Depression. The RFC was a federal lending program for all businesses hurt by the Depression, large and small. It was adopted as the personal project of Hoover's successor, President Franklin D. Roosevelt, and was staffed by some of Roosevelt's most capable and dedicated workers.

Select Committee On Small Business: Congress has been fostering fair treatment of small business since 1941 with the establishment of the Select Committee on Small Business. The basis of the Small Business Program was to foster free competition which is basic to the economic well-being and security of the Nation. This status cannot be achieved without the potential of small businesses being encouraged and developed. Contracting with these firms strengthens the economy, generates competition, lowers overall costs, creates innovations, provides more jobs than any other sector, and enhances good business practices.

Small Business Mobilization Act of 1942: In 1942, Congress recognized that business concerns operating small plants did not have the "economies of scale" necessary to compete with large plants and a price differential might be required to keep such plants mobilized for the war efforts.

Smaller War Plants Corporation (SWPC): Concern for small business intensified during World War II when large industries beefed up production to accommodate wartime defense contracts and smaller businesses were left unable to compete. To help small business participate in war production and give them financial viability, Congress created the SWPC in 1942. The SWPC provided direct loans to private entrepreneurs, encouraged large financial institutions to make credit available to small enterprises, and advocated small business interests to federal procurement agencies and big businesses. The SWPC was dissolved after the war and its lending and contract powers were handed over to the Reconstruction Finance Corporation.

Armed Services Procurement Act of 1947: In the Armed Services Procurement Act of 1947, Congress declared: "a fair proportion of the total Federal purchases and contracts for supplies and services for the Government shall be placed with small business concerns." Congress's intent was to continue in peacetime the policy which prompted enactment of the Small Business Mobilization Act.

Defense Production Act of 1950: The Korean War provided more emphasis for small business. Congress determined that preservation of small business mobilization capability was of utmost importance, and that, again, awards could be made to small businesses at *other than the lowest possible price*.

Small Defense Plants Administration (SDPA): Congress created another wartime organization to handle small business concerns during the Korean War, this time called the SDPA. Its functions were similar to those of the Smaller War Plants Corporation, except that the Reconstruction Finance Corporation (RFC) retained ultimate lending authority. The SDPA certified small businesses to the RFC when it had determined the businesses to be competent to perform the work of government contracts.

KEY SMALL BUSINESS LEGISLATION/HISTORY (Cont'd)

Small Business Act of 1953: The Small Business Act of 1953 was one of the first national policy commitments to small business concerns. The Small Business Act's purpose was to concentrate exclusively on helping to solve the myriad of problems the small business community was facing. The Small Business Act stated that the Government must help develop small businesses in order to maintain a full and free competitive enterprise system. This is basic to the economic well-being and security of the Nation. The Act stated that a fair proportion of government prime contracts and subcontracts be placed with small business concerns. For reference see FAR 19, Small Business Programs, which implements the acquisition-related sections of the Small Business Act.

Small Business Act of 1958 (P.L. 85-536): The Small Business Act of 1958 enhanced the Federal Government's commitment to small businesses. Section 201 of the Act stated that the "Government should aid, counsel, assist, and protect insofar as is possible the interests of small business concerns in order to preserve free competitive enterprise, to ensure that a fair proportion of the total purchases and contracts for supplies and services for the Government be placed with small business enterprises, and to maintain and strengthen the overall economy of the nation. The Act amended the original Small Business Act by creating the Small Business Administration (SBA). The SBA is an independent agency within the Executive Branch created to carry out the provisions of the Act. Public Law 85-536 authorized SBA to enter into contract with federal agencies for the procurement of equipment, supplies, and/or services for the Government. The SBA would then subcontract the contracts to socially and economically disadvantaged small business concerns under the authority set forth in Section 8(a) of the Act.

Minority Business Enterprise Program (Executive Order 11458 and Executive Order 11625): The Minority Business Enterprise Program came into being as a result of exclusion of individuals on the basis of their gender or race. This program is viewed as an effort to open the doors of education, employment and business development opportunities to qualified individuals who happen to be a member of groups experiencing longstanding discrimination. President Richard Nixon signed Executive Order 11458 in 1969 which prescribed arrangements for developing and coordinating a National Program for Minority Business Enterprise. In 1971, President Nixon signed Executive Order 11625 which outlined essential Government actions for developing a national program to assist minority contractors in becoming self-sufficient and competitive. A significant amount of Department of Defense (DOD), and Department of Army (DA), involvement was directed at the awarding of contracts to the Small Business Administration (SBA) under the Section 8(a) Program using both sole source and competitive 8(a) set-asides. For reference see FAR 19.8, Contracting with the Small Business Administration (The 8(a) Program) which implements the Section 8(a) of the Small Business Act.

Indian Financing Act of 1974: The Indian Financing Act of 1974 established the Indian Incentive Program to encourage contractors to use Indian organizations and Indian-owned economic enterprises as subcontractors. The act does so by permitting an incentive payment to the contractor "equal to 5% of the amount paid to a subcontractor in performing the contract, if the contract so authorizes and the subcontractor is an Indian organization or Indian-owned economic enterprise". For reference see FAR 26.1 – Indian Incentive Program which implements 25 U.S.C. 1544 that provides an incentive to prime contractors that use Indian organizations and Indian-owned economic enterprises as subcontractors.

KEY SMALL BUSINESS LEGISLATION/HISTORY (Cont'd)

Amendment to the Small Business Investment Act of 1958 and the Small Business Act of 1958 (P.L. 95-507): P.L. 95-507, enacted in 1978, made major revisions to the Small Business Act. P.L. 95-507 required Federal agencies to establish Small Business goals and explain to Congress when goals were not met. The law established Small and Disadvantaged Business Utilization (SADBU) Office at each Contracting Agency; redefined Minority Firms as “Socially and Economically Disadvantaged Small Business Concerns” (SDBs); subcontracting efforts to SDBs changed from voluntary to mandatory; prime contractors must describe the efforts they will take to assure that SDBs have an equitable opportunity to compete for subcontracts; reserved all awards under \$25,000 for small business; and established the 8(a) Program. P.L. 95-507 establishes Preferential Procurement Goals for participation by small businesses, small disadvantaged firms, 8(a) and small women-owned concerns in Federal contracting programs. The goals are forwarded to the Small Business Administration on an annual fiscal year basis for approval or negotiation.

Executive Order 12138: President Jimmy Carter signed Executive Order 12138 in 1979 in response to the findings of the Interagency Task Force on Women Business Owners and congressional findings that recognized: the significant role which small business and women entrepreneurs can play in promoting full employment and balances growth in our economy; the many obstacles facing women entrepreneurs; and the need to aid and stimulate women's business enterprise. Executive Order 12138 created the National Women's Business Enterprise Policy that prescribed arrangements for developing, coordinating and implementing a national program for women's business enterprise establishing the Woman-Owned Business Program. The Order directed all Federal agencies to: (1) facilitate, preserve and strengthen women's business enterprise and to ensure full participation by women in the free enterprise system; (2) take affirmative action in support of women's business enterprises; and (3) extend Federal financial assistance to programs or activities in support of women's business enterprises. Financial assistance means assistance extended by way of grant, cooperative agreement, loan or contract other than a contract of insurance or guaranty. Each department or agency is empowered to issue regulations requiring the recipient of such assistance to take appropriate affirmative action in support of women's business enterprise and to prohibit actions or policies that discriminate against women's business enterprise.

Small Business Innovation Development Act of 1982 (P.L. 97-219): The Small Business Innovation Development Act of 1982 established the Small Business Innovation Research (SBIR) Program. The law amended the Small Business Act to strengthen the role of the small, innovative firms in federally funded research and development, and to utilize Federal research and development as a base for technological innovation to meet agency needs and to contribute to the growth and strength of the Nation's economy. The SBIR Program was reauthorized until September 30, 2000 by the Small Business Research and Development Enhancement Act (P.L. 102-564), and reauthorized again until September 30, 2008 by the Small Business Reauthorization Act of 2000 (P.L. 106-554). For reference see DoD SBIR/STTR website at <http://www.acq.osd.mil/sadbu/sbir/>.

National Defense Authorization Act for Fiscal Year 1987, P.L. 99-661, (Section 1207): The National Defense Authorization Act for FY 1987 established the Small Disadvantaged Business (SDB) Program and expanded the Government's commitment to SDBs with emphasis on contracting with Historically Black Colleges and Universities/Minority Institutions (HBCU/MIs). PL 99-661 established a 5% goal for contract awards to SDBs and a 5% goal for contract awards of its higher educational institutions contract dollars to HBCU/MIs throughout DOD and provided for a 10% evaluation preference to those SDBs competing in full and open solicitations.

KEY SMALL BUSINESS LEGISLATION/HISTORY (Cont'd)

Business Opportunity Development Reform Act of 1988 (P.L. 100-656): The Business Opportunity Development Reform Act of 1988 amended the Small Business Act to place new emphasis on acquisition planning. The law established the Small Business Competitiveness Demonstration Program that: measures awards to Emerging Small Businesses; tests unrestricted competition in certain designated industry categories; and enhances small business participation in targeted industry categories. Public Law 100-656 also requires federal agencies having procurement awards exceeding \$50 million in any Fiscal Year (FY) to prepare a Forecast of Contract Opportunities for small business (SB) and small disadvantaged business (SDB) firms with forecast being made available to SBs and SDBs upon request and requires a liquidated damage clause in contracts having small and small disadvantaged subcontracting plans which would result in paying of damages upon a finding that a prime contractor has failed to make a good faith effort to comply with the goals set forth in subcontracting plans. The program was to end September 1997 but was re-authorized in Section 401 of the SBA's Reauthorization Act of 1997 making the program permanent.

National Defense Authorization Act for Fiscal Year 1991, Section 831, (P.L. 101-510): Under the direction of former Senator Sam Nunn and Secretary of Defense William Perry, P.L. 101-510, passed in 1992, established the Pilot Mentor-Protégé Program. Section 807 of the National Defense Authorization Act (P.L. 106-398) later amended the Mentor-Protégé Program to add Women-Owned Small Businesses. P.L. 106-398 also clarifies that business concerns owned and controlled by an Indian tribe or a Native Hawaiian organization are eligible to participate as protégé firms in the DoD Mentor Protégé Program. The DoD Mentor-Protégé Program is the pre-eminent program within the Federal government for the transformation of a small business firm with high potential to a firm of substance, that is, one able to perform well as a prime contractor and/or a subcontractor. The purpose of the Program is to provide incentives for DoD contractors to assist Small Disadvantaged Businesses (SDBs), increase SDB participation as subcontractors and suppliers under DoD contract, and foster establishment of long-term business relationships between protégé firms and SDB contractors. Regulatory implementation can be found at DFARS -- Appendix I. For reference see the DoD Mentor Protégé Program website at http://www.acq.osd.mil/sadbu/mentor_protege/.

The Small Business Technology Transfer Act of 1992 (P.L. 102-564, Title II): The Small Business Technology Transfer Act of 1992 established the Small Business Technical Transfer (STTR) Pilot Program. The law amended the Small Business Act by creating, for the first time, an effective vehicle for moving ideas from our nation's research institutions to the market, where they can benefit both private sector and military customers. The STTR program was reauthorized until the year 2001 by the Small Business Reauthorization Act of 1997 (P.L. 105-135), and reauthorized again until September 30, 2009, by the Small Business Technology Transfer Program Reauthorization Act of 2001 (P.L. 107-50). For reference see DoD SBIR/STTR website at <http://www.acq.osd.mil/sadbu/sbir/>.

Federal Acquisition Streamlining Act of 1994 (P.L. 103-355): The Federal Acquisition Streamlining Act of 1994 was enacted on 10 Oct 1994 and is the combination of several initiatives in acquisition reform. Many of the reforms in the Act represent significant changes in how companies will be doing business with the Federal Government. FASA created the Federal Acquisition Computer Network (FACNET) which allowed small businesses easier and more efficient access to Government contract opportunities all over the country. FASA replaced the term "small purchases" and established "micro-purchases" for acquisitions from \$2,500 and less and established the "simplified acquisition" threshold for small purchases from \$25,000 to \$100,000 setting the automatic Small Business Reservation at \$2,500 to \$100,000. Section 7106 of Public Law 103-355 established a government-wide goal for WOSB concerns at 5% of the total value of all prime contract and subcontract awards for each fiscal year.

KEY SMALL BUSINESS LEGISLATION/HISTORY (Cont'd)

Small Business Administration Reauthorization, Section 304 and Amendments Act of 1994 (P.L. 103-403): The Act authorized the SBA Administrator to establish and carry out a pilot program for very small business concerns. The pilot was extended by the Small Business Reauthorization Act of 1997. The Act defines a very small business concern as one that has 15 or fewer employees together with average annual receipts that do not exceed \$1 million. The purpose of this pilot program is to improve access to Federal Government contract opportunities for concerns that are substantially below SBA's size standards by reserving certain procurements for competition among such Very Small Business concerns. This pilot program has been extended to September 30, 2003, in the Small Business Reauthorization Act of 2000.

Adarand Decision: The Adarand Decision was a suite brought by Adarand Constructors Inc. in 1990 that alleged the award for a guardrail subcontract was unlawfully set-aside based on race. On 12 June 1995, the U.S. Supreme Court Decision stated that the use of racial classifications for federal affirmative action programs must meet a "strict scrutiny" test and remanded the case back to lower courts. DoD's response was the suspension of Small Disadvantaged Business (SDB) Set-asides on 23 October 1995, while still keeping the SDB Program a priority. Although SDB set-asides are no longer being used, small business set-asides are being emphasized and there is continued use of the Section 8(a) Program.

Small Business Reauthorization Act of 1997 (P.L. 105-135): The Small Business Reauthorization Act of 1997 provides federal contracting assistance for qualified small business concerns located in "Historically Underutilized Business Zones" in an effort to increase employment opportunities and investment in those areas. The Act requires a 3% HUBZone small business goal to be phased in over five years beginning with 1% of prime contract awards to be awarded to such firms in fiscal year 1999 and at least 35% of the concern's employees must reside in a HUBZone. The Act increased the overall Government-wide procurement goal for small business from 20% to 23%. The Act also defined Contract Bundling. In addition, the Act required prime contractors to establish goals for subcontracts with HUBZone small businesses. While only a small number of HUBZone small businesses have been certified by Small Business Administration (SBA), the statute does not provide the authority to implement alternative dates. Further, the statute required SBA to certify HUBZone small business concerns and maintain a list of all qualified firms. Therefore, agencies and prime contractors may not rely on self-certification to determine the status of HUBZone small business concerns. For reference see FAR 19.13 and SBA's website for HUBZone at the following website: <https://eweb1.sba.gov/hubzone/internet/>.

Veterans Entrepreneurship and Small Business Development Act of 1999 (P.L. 106-50): The Veterans Entrepreneurship and Small Business Development Act of 1999 expands existing and establishes new assistance programs for veterans who own and operate small business firms and establishes new institutions to provide SB assistance to veterans; established a Government-wide goal of 3% for service-disabled veterans for prime contracts and requires separate subcontracting goals of 3% for Veteran-Owned Small Business and Service-Disabled Veteran-Owned Small Businesses. Act allows service-disabled veterans to self-certify their status. The Act defines Veteran-Owned Small Business Concern, Service-Disabled Veteran-Owned Small Business Concern, Veteran, and Service-Disabled Veteran. P.L. 106-50 designates the position of Associate Administrator for Veterans Business Development (AANBD) and established the Office of Veterans Business Development. The Act states that the AANBD is responsible for the formulation, execution, and promotion of Veteran policies and programs of the Small Business Administration. For reference see SBA's Veterans Business Development website at: <http://www.sba.gov/VETS/>.

KEY SMALL BUSINESS LEGISLATION/HISTORY (Cont'd)

Small Business Reauthorization Act Of 2000 (P.L. 106-554): The Small Business Reauthorization Act of 2000 allows Women-Owned Small Business (WOSB) Set-Asides (permissive, not mandatory) for requirements in an industry where WOSBs are substantially underrepresented and limited to contracts not exceeding \$3 million for services and \$5 million for manufacturing. P.L. 106-554 requires the small business concern be certified as WOSB by a federal agency, state government or national certifying entity approved by the Small Business Administration or if a WOSB can provide adequate documentation to support such certification. Implementing regulatory guidance for WOSB Set-aside is still pending. There is an ongoing review being performed by the Small Business Administration.

13 CFR 124.506(b) (FAR 19.805-1(b)(2)(Revised as of January 1, 2001): 13 CFR 124.506(b) exempts an Alaska Native Corporation (ANC) subsidiary/Indian Tribal 8(a) companies from the competitive threshold limitation of \$3 million for services contracts and \$5 million for manufacturing contracts if the Small Business Administration (SBA) has not accepted the requirement into the 8(a) BD program as a competitive procurement. There is no requirement that a procurement must be competed whenever possible before it can be accepted on a sole source basis for a tribally-owned or ANC-owned concern, but a procurement may not be removed from competition to award it to a tribally-owned or ANC-owned concern on a sole source basis. For reference see FAR 19.805-1(b)(2) and the Alaska Native Claims Settlement Act Resource Center website at: <http://www.lbblawyers.com/ancsa.htm>.

13 CFR 126.613 (FAR 19.1307)(Revised as of January 1, 2001): 13 CFR 126.613 states that the price evaluation preference for HUBZone small business concerns shall be used in acquisitions conducted using full and open competition by adding a factor of 10 percent to all other offers (other than another small business concern). However, the price offered by the qualified HUBZone small business concern can not be more than 10 percent higher than the price offered by the otherwise lowest, responsive, and responsible offeror. Other evaluation factors, such as transportation costs or rent-free use of Government facilities, shall be added to the offer to establish the base offer before adding the factor of 10 percent. A concern that is both a HUBZone small business concern and a small disadvantaged business concern shall receive the benefit of both the HUBZone small business price evaluation preference and the small disadvantaged business price evaluation adjustment. (see Subpart 19.11)

National Defense Authorization Act for Fiscal Year 2001, Section 807 (P.L. 106-398): The National Defense Authorization Act for Fiscal Year 2001 expands the Department of Defense (DoD) mentor-protégé program participation to include Women-Owned Small Businesses. The Act facilitates DOD's efforts to leverage this market and increase the DoD dollars awarded to Women-Owned Small Businesses. The Act also clarifies that business concerns owned and controlled by an Indian tribe or a Native Hawaiian organization are eligible to participate as protégé firms in the DoD Mentor Protégé Program. Regulatory implementation can be found at DFARS -- Appendix I. For reference see the DoD Mentor Protégé Program website is at http://www.acq.osd.mil/sadbu/mentor_protege/.

Executive Order Tribal Colleges and Universities 13270: Executive Order 13270, signed by President George W. Bush on July 3, 2002, authorized Tribal Colleges and Universities as Minority Institutions of higher education meeting the requirements of section 1046(3) of the Higher Education Act of 1965 (20 U.S.C.1067k). The Executive Order also established the President's Board of Advisors on Tribal Colleges and Universities (the "Board") and the White House Initiative on Tribal Colleges and Universities (WHITCU) to ensure that this national policy regarding tribal colleges is carried out with direct accountability at the highest levels of the Federal Government.

KEY SMALL BUSINESS LEGISLATION/HISTORY (Cont'd)

Veteran Benefits Act of 2003, Section 308 (Public Law 108-183): The Veterans Benefits Act of 2003 enacted on December 16, 2003 amended the Small Business Act (15 U.S.C. 631 et seq.) to establish a procurement program for Small Business Concerns owned and controlled by service-disabled veterans. Permits restricted competition (set-asides) to small business concerns owned and controlled by service-disabled veterans if the contracting officer has a reasonable expectation that two or more Service-Disabled Veteran-Owned Small Businesses (SDVOSBs) would bid and award could be made at a fair market price. Permits sole source award to small business concern owned and controlled by service-disabled veterans if the contracting officer does not have a reasonable expectation that two or more SDVOSBs would bid and the award would be made at a fair and reasonable price up to \$5M for manufacturing requirements and up to \$3M for all other types of contracting opportunities. Requires consideration of SDVOSB set-asides before SDVOSB sole source awards. SDVOSB set-aside not permitted if procurement would otherwise be made from Federal Prison Industries or pursuant to the JWOD Act. On May 5, 2004, the Small Business Administration published an interim final rule to implement Section 308 of the Veterans Benefits Act of 2003 providing the key linkage to transform the vision of Public Law 108-183 into reality. SBA's interim final rule authorizes contracting officers to restrict competition for a requirement to SDVOSB concerns, defines "service-disabled" veteran, and establishes procedures for protesting the status of a SDBOSB concerns. For reference see SBA's Veterans Business Development website at: <http://www.sba.gov/VETS/>.

National Defense Authorization Act for FY 2004, Section 801: Section 801 amends 10 U.S.C. Chapter 141 by adding a new Section 2382, which limits the use of acquisition strategies involving consolidation adding the term, "Contract consolidation" and lowering the "substantial" threshold requiring greater initial analysis to \$5M. For Contract Bundling "Benefit Analysis Guidebook" see: <http://www.acq.osd.mil/sadbu/news/contractconsolidation.pdf>.

DEFINITIONS

An 8(a) Contract is a contract with the Small Business Administration under a program established by Section 8(a) of the Small Business Act. Under that program, the Small Business Administration is authorized to enter into all types of contracts with other agencies and let subcontracts for performing those contracts to firms eligible for program participation. (FAR 19.800(a))

An 8(a) Contractor is a Small Business Administration's subcontractor under an 8(a) contract. (FAR 19.800(a))

Bundling is consolidating two or more requirements for supplies or services, previously provided or performed under separate smaller contracts, into a solicitation for a single contract that is likely to be unsuitable for award to a small business concern due to -- (i) The diversity, size, or specialized nature of the elements of the performance specified; (ii) The aggregate dollar value of the anticipated award; (iii) The geographical dispersion of the contract performance sites; or (iv) Any combination of the factors described in (i), (ii), and (iii). This definition does not apply to a contract that will be awarded and performed entirely outside of the United States. (FAR 2.101)

A Certificate of Competency (COC) is the certificate issued by the Small Business Administration SBA) stating that the holder is responsible (with respect to all elements of responsibility, including, but not limited to, capability, competency, capacity, credit, integrity, perseverance, tenacity, and limitations on subcontracting) for the purpose of receiving and performing a specific Government contract. (FAR 19.601)

A Comprehensive Plan is a DoD test program established under Section 834 of P.L.101-189, to determine whether comprehensive subcontracting plans on a corporate, division, or plant-wide basis will reduce administrative burdens while enhancing subcontracting opportunities for small and small disadvantaged business concerns. The test is being conducted from October 1, 1990 to September 30, 2005 and permits contractors selected for participation in the test program to use comprehensive plans on a corporate, division, or plant wide basis when performing any DoD contract or subcontract that requires a subcontracting plan. Comprehensive plans are: negotiated on an annual basis by the designated contracting activities; incorporated into all of the contractor's active DoD contracts which require a plan; used by all DoD contracting officers in contracts, which require a plan, awarded to the selected contractors during the test period; and not subject to application of liquidated damages during the period of the test program. (DFARS 219.702)

A Commercial Plan is a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line). (FAR 19.701)

A concern is any business entity organized for profit (even if its ownership is in the hands of a nonprofit entity) with a place of business located in the United States and which makes a significant contribution to the U.S. economy through payment of taxes and/or use of American products, material and/or labor, etc. "Concern" includes but is not limited to an individual, partnership, corporation, joint venture, association, or cooperative. For the purpose of making affiliation findings (see 19.101) any business entity, whether organized for profit or not, and any foreign business entity, i.e., any entity located outside the United States, shall be included. (FAR 19.001)

DEFINITIONS (Cont'd)

An Emerging Small Business Concern is a small business concern whose size is no greater than 50% of the numerical size applicable to the North American Industry Classification System Code assigned to a contracting opportunity. (FAR 19.1002)

Fair Market Price is a price based on reasonable costs under normal competitive conditions and not on lowest possible cost (see 19.202-6). (FAR 19.001)

Federal Acquisition Computer Network (FACNET) Architecture is a Government system that provided user access, employs nationally and internationally recognized data formats, and allows the electronic data interchange of acquisition information between the private sector and the Federal Government. (FAR 2.101)

Federal Prison Industries, Inc. (FPI) is a self-supporting, wholly owned Government corporation of the District of Columbia also referred to as UNICOR. It provides training and employment of prisoners confined in Federal penal and correctional institutions through the sale of its supplies and services to Government agencies (18 U.S.C.4121-4128) and diversifies its supplies and services to prevent private industry from experiencing unfair competition from prison workshops or activities. (FAR 8.601)

Historically Black Colleges and Universities and Minority Institutions (HBCU/MI) is an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. For the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, the term also includes any nonprofit research institution that was an integral part of such a college or university before November 14, 1986. (FAR 52.226-2) A MI is an institution of higher education meeting the requirements of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C.1067k), including a Hispanic-serving institution of higher education, as defined in Section 316(b)(1) of the Act (20 U.S.C.1101a) and Tribal Colleges and Universities per Executive Order 13270 dated July 3, 2002.

HUBZone Small Business Concern is a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration (SBA). A HUBZone Small Business Concern must be a small business by SBA standards; owned and controlled by one or more U.S. citizens, a Community Development Corporation, or Indian tribe; its principal office must be located within a HUBZone (which includes lands on federally recognized Indian reservations); and who has at least 35% of its employees residing in a HUBZone. A certification is required from the SBA. (13 CFR 126.103) (FAR 19.13)

Indian is any person who is a member of any Indian tribe, band, group, pueblo, or community that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) in accordance with 25 U.S.C. 1452(c) and any "Native" as defined in the Alaska Native Claims Settlement Act. (43 U.S.C. 1601) (FAR 26.101)

Indian Organization is the governing body of any Indian tribe or entity established or recognized by the governing body of an Indian tribe for the purposes of 25 U.S.C., Chapter 17. (FAR 26.101)

Indian-owned Economic Enterprise is any Indian-owned (as determined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian ownership constitutes not less than 51 percent of the enterprise. (FAR 26.101)

DEFINITIONS (Cont'd)

Individual Contract Plan is a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract. (FAR 19.701)

Industry is all concerns primarily engaged in similar lines of activity, as listed and described in the North American Industry Classification system (NAICS) manual (available via the Internet at <http://www.census.gov/epcd/www/naics.html>). (FAR 19.001)

Joint Venture for size determination purposes is an association of persons or concerns with interests in any degree or proportion by way of contract, express or implied, consorting to engage in and carry out a single specific business venture for joint profit, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally. A joint venture is viewed as a business entity in determining power to control its management. (FAR 19.101)

Joint Venture Agreement (JVA) is an agreement between an eligible 8(a) Participant and one or more other business concerns to establish a new legal entity solely for the purpose of performing a specific 8(a) contract. The contract is then awarded to the Joint Venture entity rather than to one or more of the Participants. (SBA Procedural Notice, Control No. 8000-596, dated 7-30-2003)

Master Plan is a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved. (FAR 19.701)

Minority is (1) *American Indian or Alaskan Native* (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification), (2) *Asian and Pacific Islander* (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands), (3) *Black* (all persons having origins in any of the black African racial groups not of Hispanic origin), and (4) *Hispanic* (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race). (FAR 52.222.27(a))

Minority Institution is an institution of higher education meeting the requirements of section 1046(3) of the Higher Education Act of 1965 (20 U.S.C.1067k), including a Hispanic-serving institution of higher education, as defined in section 316(b)(1) of the Act (20 U.S.C.1101a) and Tribal Colleges and Universities as defined in Executive Order Tribal Colleges and Universities 13270 of July 3 2002.

Non-manufacturer Rule means that a contractor under a small business set-aside or 8(a) contract shall be a small business under the applicable size standard and shall provide either its own product or that of another domestic small business manufacturing or processing concern (see 13 CFR 121.406). (FAR 19.001)

Number of Employees is a measure of the average employment of a business concern and means its average employment, including the employees of its domestic and foreign affiliates, based on the number of persons employed on a full-time, part-time, temporary, or other basis during each of the pay periods of the preceding 12 months. If a business has not been in existence for 12 months, "number of employees" means the average employment of such concern and its affiliates during the period that such concern has been in existence based on the number of persons employed during each of the pay periods of the period that such concern has

DEFINITIONS (Cont'd)

been in business. If a business has acquired an affiliate during the applicable 12-month period, it is necessary, in computing the applicant's number of employees, to include the affiliate's number of employees during the entire period, rather than only its employees during the period in which it has been an affiliate. The employees of a former affiliate are not included, even if such concern had been an affiliate during a portion of the period. (FAR 19.101)

Partial Set-aside For Small Business is a portion of an acquisition, except for construction, for exclusive small business participation. It is also referred to as a partial small business set-aside. (FAR 19.502-3)

Prime Contractor is a person who has entered into a prime contract with the United States. A *prime contract* is a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind. (FAR 3.502-1)

Service-Disabled Veteran is a veteran with a disability that is service-connected. A certification is not required from the SBA. (FAR 52.219-1(c))

Service-Disabled Veteran-Owned Small Business Concern is a small business concern that not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans and the management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran. (FAR 52.219-1(c)) (FAR 19.1403)

Set-Aside for Small Business is the reserving of an acquisition exclusively for participation by small business concerns. A small business set-aside may be open to all small businesses. A small business set-aside of a single acquisition or a class of acquisitions may be total or partial. (FAR 19.501(a))

Small Business Concern is a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on government contracts, and qualified as a small business under the criteria and size standards in 13 CFR Part 121 (see 19.102). Such a concern is "not dominant in its field of operation" when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. (FAR 19.001)

Small Disadvantaged Business (SDB) Concern is a small business concern that:

(1) has received certification by the Small Business Administration as a small disadvantaged business concern consistent with 13 CFR 124, Subpart B; and (A) No material change in disadvantaged ownership and control has occurred since its certification; (B) Where the concern is owned by one or more disadvantaged individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and (C) It is identified, on the date of its representation, as a certified small disadvantaged business concern in the database maintained by the Small Business Administration in the Central Contractor Registration (CCR) Dynamic Small Business Search (previously PRO-Net); or (2) has submitted a completed application to the Small Business Administration or a Private Certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR 124, Subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since its application was submitted. (FAR 52.219-22)

DEFINITIONS (Cont'd)

Subcontract is a contract or contractual action entered into by a prime contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract. (FAR 3.502-1)

Subcontractor is any person, other than the prime contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract; and includes any person who offers to furnish or furnishes general supplies to the prime contractor or a higher tier subcontractor. (FAR 3.502-1)

Veteran is a person who served in the active military, naval, or air service, and who was discharged or released under conditions other than dishonorable. A certification is not required from the SBA. (P.L. 106-50) (38 U.S.C. 101(2))

Veteran-Owned Small Business Concern is a small business concern that is at least 51 percent owned by one or more veterans (as defined at 38 U.S.C.101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and the management and daily business operations of which are controlled by one or more veterans. (FAR 52.219-1(c))

Women-Owned Small Business Concern is a small business concern that is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of that is owned by one or more women; and whose management and daily business operations are controlled by one or more women. (FAR 52.219-1(c))

SMALL BUSINESS PROGRAMS

Certificate of Competency (COC) Program empowers the SBA to certify to Government contracting officers as to all elements of responsibility of any small business concern to receive and perform a specific Government contract which allows an apparent successful small business offeror found to be non-responsible by the contracting officer to obtain another opportunity at their responsibility issue. A contracting officer shall, upon determining an apparent successful small business offeror to be nonresponsible, refer that small business to the Small Business Administration (SBA) for a possible COC. If the SBA determines the small business to be responsible, SBA will issue a COC stating that the holder is responsible (with respect to all elements of responsibility, including, but not limited to, capability, competency, capacity, credit, integrity, perseverance, tenacity, and limitations on subcontracting) for the purpose of receiving and performing a specific Government contract. (FAR 19.6)

DoD Mentor Protégé Program was established under Section 831 of the National Defense Authorization Act for FY91 (PL 101-510)(10 U.S.C. 2302). Section 807 of the National Defense Authorization Act for FY01 (P.L. 106-398) later amended the Mentor Protégé Program for FY 01 to add Women-Owned Small Businesses. P.L. 106-398 also clarified that business concerns owned and controlled by an Indian tribe or a Native Hawaiian organization are eligible to participate as protégé firms in the DoD Mentor Protégé Program. The purpose of the Program is to provide incentives to major DoD contractors, performing under at least one active approved subcontracting plan negotiated with DoD or another Federal agency, to assist protégé firms in enhancing their capabilities to satisfy DoD and other contract and subcontract requirements; increase the overall participation of protégé firms as subcontractors and suppliers under DoD contracts, other Federal agency contracts, and commercial contracts; and foster the establishment of long-term business relationships between protégé firms and such contractors. Under the Mentor Protégé Program, new agreements are limited to 3 years, maximum reimbursement of \$1M per year per protégé, Defense Contract Management Agency will conduct performance reviews, and past performance is a major factor in determining the amount of mentor reimbursement. A mentor must have an active approved subcontracting plan negotiated with DoD or another Federal Agency and be eligible for award of federal contracts. A protégé must meet any of the following: Small Disadvantaged Business Concern; business entity owned and controlled by an Indian tribe; business entity owned and controlled by a Native Hawaiian Organization; Qualifying organization that employs the disabled; or Small Woman-Owned Business and all the above must be eligible for award of federal contracts. The DoD Small and Disadvantaged Business Utilization Office approves contractors as mentor firms, approves mentor-protégé agreements, and provides funding. DoD Mentor Protégé Program website is at http://www.acq.osd.mil/sadbu/mentor_protége. (Regulatory implementation can be found at DFARS -- Appendix I)

DoD Small Business Innovation Research (SBIR) Program was established under the Small Business Innovation Development Act of 1982 and reauthorized by the Small Business Research and Development Enhancement Act of 1992. The objectives of the program are to stimulate technological innovation by small business, increase small business participation in meeting federal research and development needs, increase commercialization of technology developed through federal research and development, and enhance efforts to increase participation of SDB and WOSB concerns. DoD issues a SBIR solicitation twice a year, describing its R&D needs and inviting R&D proposals from small companies having 500 or fewer employees, including all affiliated firms. In the SBIR Program, companies apply first for a six-month phase I award of \$60,000 to \$100,000 to test the scientific, technical, and commercial merit and feasibility of a particular concept. If phase I proves successful, the company may be invited to apply for a two-year phase II award of \$500,000 to \$750,000 to further develop the concept, usually to the prototype stage. Proposals are judged competitively on the basis of scientific, technical, and commercial merit. Following completion of phase II, small companies are expected to obtain funding from the private sector and/or non-SBIR

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government sources (in "phase III") to develop the concept into a product for sale in private sector and/or military markets. Under DoD's SBIR Program up to \$850,000.00 in early-stage research and development funding is available to small technology companies (or individuals who form a company). (See SBIR/STTR website at <http://www.acq.osd.mil/sadbu/sbir/>)

DoD Small Business Technology Transfer (STTR) Program was established under the Small Business Technology Transfer Act of 1992 and Public Law 102-564, Title II as a pilot program to fund cooperative research and development projects. It is designated to join two powerful forces for technological progress: (1) the entrepreneurial talent of the high-tech small business and (2) the innovative ideas, science and engineering expertise, and facility resources of the nation's universities and research institutes. DoD issues one STTR research solicitation each year. In the STTR Program, Phase I is for determining the scientific, technical and commercial merit and feasibility of the proposed cooperative effort and the quality of performance of the small business concern with a relatively small investment before consideration of future DoD support in Phase II. Typically, Phase I awards are limited to \$100,000 in size for a period not to exceed one year. Subsequent Phase II awards will be made to firms on the basis of results from the Phase I effort and the scientific, technical merit and commercial potential of the Phase II proposal. Phase II awards are typically \$500,000 in size and are not to exceed 24 months. Phase II is the principal research or research and development effort and is expected to produce a well-defined deliverable product or process. Under Phase III the small business is expected to use non-federal capital to pursue private sector applications of the research or development. Also under Phase III, federal agencies may award non-STTR funded follow-on contracts for products or processes that meet the mission of those agencies. Up to \$600,000.00 in early-stage research and development funding is available to small companies working cooperatively with researchers at universities and other research institutions under this program. (See DoD SBIR/STTR website at <http://www.acq.osd.mil/sadbu/sbir/>)

Historically Black Colleges and Universities, and Minority Institutions (HBCU/MIs) Program was established as a result of the National Defense Authorization Act of 1987 and DOD Authorization Act of 1988 and further emphasized by Executive Order 12928 in 1994. The purpose of the program is to promote participation of HBCU/MIs in Federal procurements. These laws were enacted to provide grants, contracts and/or cooperative agreements with HBCU/MIs, Tribal Colleges and Hispanic Institutions. Procurement opportunities for receiving research, studies, supplies or services of the type normally acquired from higher educational institutions are available for HBCU/MIs. A 5 % goal for award of its educational contract dollars to HBCU/MI's is in place. For the latest listing of HBCUs, go to website: <http://www.sdbp.com/hbcu.html>. AMC's HBCU/MI's website at: http://www2.brtrc.com/amc/hbcu_mi. For the latest listing of all HBCUs by state, go to White House Initiative on Historically Black Colleges and Universities website: <http://www.ed.gov/about/inits/list/whhbcu/edite-index.html> and the latest listing of Tribal Colleges and Universities at White House Initiative on Tribal Colleges and Universities Home Page at <http://www.ed.gov/about/inits/list/whhc/edlite-tcllist.html>. (FAR 26.3)

HUBZone Empowerment Contracting Program is a community-based economic development program created by the Historically Underutilized Business Zone (HUBZone) Act of 1997 (P.L. 104-135)(15 U.S.C.631 note) and enacted into law as part of the Small Business Reauthorization Act of 1997 (P.L. 105-135). The purpose of the HUBZone Program is to provide Federal contracting assistance for qualified small business concerns located in historically underutilized business zones, in an effort to increase employment opportunities, investment, and economic development in those areas. The Program increases contract opportunities for HUBZone small business concerns by allowing use of HUBZone set-asides, sole source awards, and price evaluation preferences in full and open competition. Federal agencies must also submit a

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goal for subcontracts to be awarded by prime contractors to certified HUBZone small business concerns under subcontracting plans. To be a qualified HUBZone entity, a firm must be: a qualified small business by SBA Standards; must be owned and controlled only by U.S. citizens, Community Development Corporations or Indian Tribes; the principal office of the concern must be located in a HUBZone; and at least 35% of the concern's employees must reside in a HUBZone (see 13 CFR Part 126.103). The three HUBZone categories are: Urban - Metropolitan Area Census Tracts (HUD); Rural - Non-metropolitan counties with a median household income is less than 80% of the non-metropolitan state level (Census) and unemployment rate that is less than 140 % of the state-wide average; and Native American – all federally recognized Indian reservations defined by external boundary and areas covered by external boundary and areas covered by phrase 'Indian Country' (see 13 CFR Part 126.103). The U.S. Small Business Administration (SBA) is responsible for certifying, regulating, and implementing the HUBZone Program. See SBA's website for HUBZone at the following website: <https://eweb1.sba.gov/hubzone/internet/>. (FAR 19.13)

Indian Incentive Program was established by Section 504 of the Indian Financing Act of 1974 (25 U.S.C. 1544) and Section 8024 of both the DoD Appropriations Act for FY 99 and FY00 (PLs 105-262 and PL 106-79). The purpose of the program is to give Indian organizations and Indian-owned economic enterprises the maximum practicable opportunity to participate in performing contracts awarded by Federal agencies. Authorized by 25 U.S.C. 1544, the Indian Incentive Program provides an incentive to prime contractors that use Indian organization and Indian-owned economic enterprises as subcontractors. The program allows an incentive payment equal to 5% of the amount paid to a subcontractor in performing the contract, if it is authorized by the contract. Congress provides \$8 million annually for the DoD Indian Incentive Program in the DoD Appropriations Act. To participate in the DoD Indian Incentive Program, a prime contractor must submit a request for incentive payments to DoD contracting officer. The request should (1) cite the use of FAR Clause 52.226-1 or DFARS Clause 252.226-7001 in the DoD contract, (2) include copies of subcontractor's invoices and summary statement, (3) annotate total payment of subcontract and calculation for 5% rebate, and (4) contain subcontractor's status as an Indian-Owned economic enterprise pursuant to the above cited FAR and DFAR Clauses. The DoD Contracting Officer's role in the participation process pursuant to the prime contractor request above, includes (1) review and verify documents received, (2) forward request and verification summary for incentive payment to DoD SADBU Office which is responsible for providing the funding, and (3) providing e-mail address, telephone and fax numbers of POC to receive the MIPR and the DoD Contracting Officer. The Prime may request the insertion of FAR Clause 52.226-1 and file for the incentive payment any time during the life of the contract. The present 5% rebate program started in FY97. Claims may go back to that period if the contract is open and performance is being made by the Prime. Once the performance is completed and/or the contract is closed, the Prime cannot file the claim. The average time frame for receipt of the 5% fee is approximately 3 weeks. However, if there is a challenge as to the validity of the Indian-owned business by the Contracting Officer, it can take as long as 2 months. See DoD's website for the Indian Incentive Program the following website: <http://www.acq.osd.mil/sadbu/programs/iip/index.htm>. (FAR 26.1)

Javits-Wagner-O'Day (JWOD) Program was established by the Wagner-O'Day Act in 1938 under President Franklin D. Roosevelt in order to provide employment opportunities for people who are blind by allowing them to manufacture mops and brooms to sell to the Federal Government. In 1971, under the leadership of Senator Jacob Javits, Congress amended this Act (41 U.S.C. 46-48c) to include people with severe disabilities and allow the Program to also provide services to the Federal Government. The JWOD program is a Socio-economic program whose purpose is to create jobs and training opportunities for people who are

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blind or who have other severe disabilities. The JWOD Program provides employment opportunities for nearly 40,000 Americans who are blind or who have other severe disabilities. The Committee administers the JWOD Program for Purchase From People Who Are Blind or Severely Disabled, an independent Federal agency. The JWOD Program uses the purchasing power of the federal government to buy quality products and services at a fair market price from participating, community-based nonprofit agencies dedicated to training and employing individuals with disabilities. The JWOD Program requires the Government to purchase supplies or services on the Procurement List, at prices established by the Committee, from JWOD participating nonprofit agencies if they are available within the period required. The National Industries for the Severely Handicapped (NISH) and the National Industries for the Blind (NIB) are two Central Nonprofit Agencies participating in the JWOD Program. For additional information on JWOD see website <http://www.jwod.gov/jwod/index.html>. (FAR 8.7)

Section 8(a) Business Development (BD) Program was authorized under Section 8(a) of the Small Business Act of 1958 (P.L. 85-536) and established by P.L. 95-507 in 1974. The 8(a) Program is a business development program that helps disadvantaged business firms compete in the American economy by assisting in the expansion and development of existing, newly organized, or prospective profit-oriented small firms. The 8(a) Program is set up as a nine year program composed of two stages. The Developmental Stage is the first four years with emphasis on sole source contracts, strengthening financial and managerial skills, and improving access to markets. The Transitional Stage is the last five years with emphasis on competition, overcoming remaining elements of economic disadvantage, and preparing for graduating out of the program. Small Businesses may apply for the 8(a) program if they are owned, operated, and managed on a daily basis by individuals who are socially and economically disadvantaged. The 8(a) Program is administered by the Small Business Administration (SBA) who must certify and monitor all firms in the program. Under this program, the government awards prime contracts to the SBA, which in turn, subcontracts with one of its approved 8(a) contractors. By Partnership Agreement dated February 1, 2002, between the Small Business Administration (SBA) and the Department of Defense (DoD), the SBA delegated to the Under Secretary of Defense (Acquisition, Technology, and Logistics) its authority under paragraph 8(a)(1)(A) of the Small Business Act (15 U.S.C. 637(a)) to enter into 8(a) prime contracts, and its authority under 8(a)(1)(B) of the Small Business Act to award the performance of those contracts to eligible 8(a) Program participants. However, the SBA remains the prime contractor on all 8(a) contracts, continues to determine eligibility of concerns for contract award, and retains appeal rights under FAR 19.810. The SBA delegates only the authority to sign contracts on its behalf. Consistent with the provisions of this subpart, this authority is hereby redelegated to DoD contracting officers to the extent that it is consistent with any dollar or other restrictions established in individual warrants. This authority expires on September 30, 2004. Contracts awarded under the PA may be awarded directly to the 8(a) participant on either a sole source or competitive basis. An SBA signature on the contract is not required. Notwithstanding the Partnership Agreement, the contracting officer may elect to award a contract pursuant to the provisions of FAR Subpart 19.8. (DFARS 219.800) The Partnership Agreement will remain in effect until September 30, 2004. SBA's 8(a) Business Development website can be viewed at <http://www.sba.gov/8abd/>. (FAR 19.8)

The Small Business Competitiveness Demonstration Program was established by the Small Business Competitiveness Demonstration Program Act of 1988, Public Law 100-656 (15 U.S.C.644 note). The program consists of two major components: unrestricted competition in four designated industry groups and enhanced small business participation in 10 agency targeted industry categories. The purpose of the Program is: to assess the ability of small businesses to compete successfully in certain industry categories without competition being restricted by the use of small business set-asides; to expand small business participation in 10 targeted industry categories through continued use of set-aside procedures, increased

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management attention, and specifically tailored acquisition procedures, as implemented through agency procedures; and to measure the extent to which awards are made to a new category of small businesses known as emerging small businesses and to provide for certain acquisitions to be reserved for emerging small business participation only. (FAR 19.10)

Small Business Set-Aside Program consists of a procurement action in which only small business firms can compete for the buy. Acquisitions between \$25K and \$100K are automatically reserved exclusively for small business concerns and shall be set-aside for small businesses unless the contracting officer determines there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns that are competitive in terms of market prices, quality, and delivery. This determination applies to acquisitions over \$100K, as well. A set-aside can require the entire buy to be set-aside for total small business participation or may require only part of the buy to be reserved for small business (partial set-aside). If the contracting officer does not proceed with the small business set-aside and purchases on an unrestricted basis, the contracting officer shall include in the contract file the reason for this unrestricted purchase. If the contracting officer receives only one acceptable offer from a responsible small business concern in response to a set-aside, the contracting officer should make an award to that firm. If the contracting officer receives no acceptable offers from responsible small business concerns, the set-aside shall be withdrawn and the requirement, if still valid, shall be resolicited on an unrestricted basis. (FAR 19.5)

Small Business Subcontracting Program came into being as a result of a 1978 amendment to the Small Business Act (PL 95-507). The purpose of the subcontracting program is to give the various small business categories the maximum practicable opportunity to participate in the subcontracts awarded by Government prime contractors. The Act states that any contractor receiving a contract for more than the simplified acquisition threshold must agree in the contract that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns will have the maximum practicable opportunity to participate in contract performance consistent with its efficient performance. In negotiated buys of \$500K or more (\$1M for construction) and that has subcontracting possibilities, a large business firm shall submit and obtain approval of their Small Business Subcontracting Plan from the Contracting Officer prior to receiving the award. In sealed bidding the criteria is the same except if the selected bidder fails to submit a plan within the time limit prescribed by the contracting officer, the bidder will be ineligible for award. Subcontracting plans are not required from: small business concerns; for personal services contracts; or from contracts or contract modifications that will be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. (FAR 19.7)

Small Disadvantaged Business (SDB) Program was established in 1969 by Executive Order 11458 signed by President Richard Nixon that established a National Program for Minority Business Enterprise. P.L. 95-507, enacted in 1978, effectively changed the program terminology from "minority business" to "small disadvantaged business". Under the SDB Program, a SDB is a small business concern that is at least 51% owned and controlled by a socially and economically disadvantaged individual or individuals. African Americans, Hispanic Americans, Asian Pacific Americans, Subcontinent Asian Americans, and Native Americans are presumed to qualify. Other individuals can qualify if they show by a "preponderance of the evidence" that they are disadvantaged. All individuals must have a net worth of less than \$750,000, excluding the equity of the business and primary residence. Successful applicants must also meet applicable size standards for small businesses in their industry. To represent itself as a SDB for Federal contracting, a firm must have received a certification from SBA that it qualifies as an SDB or submitted an application for SDB certification to SBA or a Private Certifier, and must not have received a negative determination

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regarding that application from SBA or the Private Certifier, and be on the SBA-maintained list of qualified SDBs. Once certified, the firm is added to an on-line registry of SDB-certified firms maintained in the Central Contractor Registration (CCR) Dynamic Small Business Search (previously PRO-Net). Certified firms remain on the list for three years. SDB certification and eligibility criteria can be found on SBA's SDB website located at: <http://www.sba.gov/sdb/indexaboutsdb.html>. Contracting officers and large business prime contractors may search this on-line registry for potential suppliers. The program also requires large business contractors to address their SDB efforts in their Small Business Subcontracting Plan (FAR 19.11 and 19.7). Congress mandates the Department of Transportation, Department of Energy, U.S. Agency for International Development and NASA to include all women-owned businesses in their disadvantaged business goals. Although the SDB Program allows a price evaluation preference for SDB firms competing on full and open acquisitions, a determination was made in Fiscal Year 2002 that DoD exceeded the 5 percent goal established in 10 U.S.C. 2323(a) for contract awards to SDBs and the use of the price evaluation adjustment prescribed in FAR 19.11 and DFARS 219.11 is suspended for DoD until February 23, 2004. This suspension applies to all solicitations issued from February 24, 2003 to February 23, 2004. (FAR 19)

Veteran-Owned Small Business and Service-Disabled Veteran-Owned Small Business (VOSB/SDVOSB) Program was established by the Veterans Entrepreneurship and Small Business Development Act of 1999 (P.L. 106-50). The Act recognized that many veterans and/or reservists have been negatively impacted by the numerous military deployments in the past 10 years. The VOSB/SDVOSB Program provides technical, financial, and procurement assistance by expanding existing and establishing new assistance programs for veterans and service-disabled veterans who own or operate small businesses. The program establishes the Associate Administrator of Veterans Business Development within the Small Business Administration and defines service disabled veteran and veteran (FAR 2.201). The program established a statutory service-disabled veteran small business goal of 3% of prime and subcontract awards; however, there is no set-aside preference for these categories. Large business contractors must address their VOSB and SDVOSB subcontracting efforts in their Small Business Subcontracting Plan. On December 16, 2003, the Veterans Benefits Act of 2003, Section 308 (P.L. 108-183) amended the Small Business Act (15 U.S.C. 631 et seq.) to establish a procurement program for Small Business Concerns owned and controlled by service-disabled veterans. Section 308 of that law provided that contracting officers may award a sole source or set-aside contract to Service-Disabled Veteran Owned Small Business Concerns (SDVOSBCs), if certain conditions are met. Specifically, a contracting officer may award a sole source contract to any small business concern owned and controlled by service-disabled veterans if: a such concern is determined to be a responsible contractor with respect to performance of such contract opportunity and the contracting officer does not have a reasonable expectation that 2 or more small business concerns owned and controlled by service-disabled veterans will submit offers for the contracting opportunity; the anticipated award price of the contract (including options) will not exceed \$5.0M in the case of a contract opportunity assigned a North American Industry Classification System code for manufacturing or \$3.0M in the case of any other contract opportunity; and in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price (FAR 19.1405(a)). Additionally, a contracting officer may award contracts on the basis of competition restricted to small business concerns owned and controlled by service-disabled veterans if the contracting officer has a reasonable expectation that not less than 2 small business concerns owned and controlled by service-disabled veterans will submit offers and that the award can be made at a fair market price (FAR 19.1406(a)). The Veterans Benefits Act of 2003 does not require a program to formally certify concerns as SDVOSBCs. A SDVOSBC will be able to "self-represent" its status as a SDVOSBC to the contracting activity as part of its offer. For reference see SBA's Veterans Business Development website at: <http://www.sba.gov/VETS/>.

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Women-Owned Small Business (WOSB) Program came into being as a result of Executive Order 12138 signed in May 1979 by President Jimmy Carter which prescribed a national initiative to assist WOSB entrepreneurs. Congress also passed the Federal Acquisition Streamlining Act (P.L. 103-355) of 1994 which established a 5% government-wide goal for contract and subcontract awards to WOSB for each fiscal year. Later the SB Reauthorization Act of 2000 (PL 106-554) was passed that allowed federal agencies to "restrict competition" when soliciting for supplies or services in industries where WOSB are underrepresented. The WOSB set-aside is limited to: contract not exceeding the \$3M (services) and \$5M (manufacturing) thresholds; award can be made at a fair and reasonable price; and being certified by a federal agency, state government, or national certifying entity approved by the Small Business Administration (SBA) or if a WOSB can provide adequate documentation to support such certification. Implementing regulatory guidance for WOSB Set-aside is still pending. There is an ongoing review being performed by the SBA. At this time there is no certification procedure required for women-owned businesses for Federal procurement. However, women are encouraged to self-certify their business as a woman-owned small business (WOSB) in the Central Contractor Registration (CCR) Dynamic Small Business Search (previously PRO-Net) database. Information on certification of Women-Owned Small Businesses can be found at website: <http://www.womenbiz.gov/certifications.html>. Section 807 of the National Defense Authorization Act for Fiscal Year 2001 (P.L. 106-398) expanded the DoD mentor-protégé program to include WOSB. WOSB is defined as a concern which is at least 51 % owned by one or more women; or, in the case of any publicly owned business, at least 51% of the stock of which is owned by one or more women and whose management and daily business operations are controlled by one or more women. (FAR 2.101) See DoD's WOSB website at <http://www.acq.osd.mil/sadbu/programs/wosb/index.htm> and SBA's WOSB website at <http://www.sba.gov/womeninbusiness>.

SET-ASIDE PROGRAM ORDER OF PRECEDENCE

As of publication of this Guide, the current Federal Acquisition Regulation and Code of Federal Regulation provide the following order of precedence.

After determining that a mandatory Government supply source will not be utilized (i.e. GSA, FPI, JWOD, etc.), the requirement should then be reviewed for a potential small business award. The small business set-aside should be considered in the following order:

1. 8(a) Program:
 - Either Sole Source 8(a) Award with preference for HUBZone 8(a) Concerns (FAR 19.800(e)); or Competitive 8(a) Set-Aside (FAR 19.800(e))
2. HUBZone Set-aside (FAR 19.1305(a))
3. HUBZone Sole Source Award (FAR 19.1306(a))
4. Service-Disabled Veteran-Owned Small Business Set-Aside (FAR 19.1405(a))
5. Service-Disabled Veteran-Owned Small Business Sole Source Award (FAR 19.1406(a))
6. Total Small Business Set-Aside (FAR 19.502-2)
7. Partial Small Business Set-Aside (FAR 19.502-3))
8. Full and Open Competition (FAR 6.1)

Other Small Business Order of Precedence features:

- FAR 19.501(e) requires the Contracting Officer to document why a small business set-aside is not appropriate unless a HUBZone or Service-Disabled Veteran-Owned Small Business set-aside or HUBZone or Service-Disabled Veteran-Owned sole source award is anticipated.

- Follow-on acquisitions: In order for repetitive acquisitions to be awarded through the 8(a) Program, there must be separate offers and acceptances (FAR 19.804-4). If the previous acquisition was an 8(a) and the Contracting Officer determines not to continue in the 8(a) Program, the Contracting Officer must notify SBA. If the previous acquisition was a Small Business Set-Aside, the Contracting Officer shall consider HUBZone Set-asides before HUBZone sole-source awards or small business set-asides (FAR 19.1305(a)). However, if the Contracting Officer decides to go 8(a) (IAW DFARS 219.803(c)), the Contracting Officer must provide SBA the previous procurement history so SBA can do an impact analysis, IAW the regulations, to determine if there would be any adverse impact to small businesses if they accepted the acquisition into the 8(a) Program.

It is recommended the procurement strategy be worked closely with the Small Business Specialist and the SBA Representative from the Contracting Officer's activity.

ROLE OF THE PLAYERS

Office of Small and Disadvantaged Business Utilization (DOD/DA):

- Responsible for implementation and execution of Small Business Programs
- Established by Section 221(k) of Public Law 95-507
- Authority provided by statute
- Directed by DOD Directive 4205.1 "DOD Small Business and Small Disadvantaged Business Utilization Program," dated September 11, 1996

Commanding General or Director of Major Subordinate Command:

- Responsible for effective implementation of Small Business (SB) Program*
- Responsible for SB Program goal(s)/target(s) achievement
- Responsible for ensuring contracting and technical personnel maintain knowledge of SB Program requirements and take all reasonable action to increase small business participation at their Command
- SB Program goal/target attainment part of their performance appraisal
- Appoint SB Specialist(s) for their activity and provide optimum staff and resources

* Includes HBCU/MI Program

Small Business Specialist:

- Serves as Principal Advisor to the Commander regarding SB issues
- Aids, counsels, and assists all businesses on Government contracting matters, including changes to the procurement system by providing advice, information, and instructions
- Advises and assists contracting, program managers, and requirements personnel on all SB matters early in the acquisition planning and throughout the follow-on process to increase the use of SB Program participants
- Develops and implements training programs for personnel whose duties and functions affect the activity's SB Program
- Provides assistance to Contracting Officers and Administrative Contracting Officers concerning SB Program matters
- Reviews all procurement packages in excess of \$10K including those restricted for exclusive small business participation
- Reviews and comments on Acquisition Strategies/Plans, Subcontracting Plans, Management Decision Documents
- Recommends SB Program goals/targets and goal/target assignments
- Monitors SB performance
- Maintains outreach programs to locate competent SB firms and HBCU/MIs
- Provides SB technical advisory support to local SBA-PCR
- Serves as the liaison with the SBA-PCR

ROLE OF THE PLAYERS (Cont'd)

PEO/Program Manager /Technical Personnel:

- Actively supports SB Program
- Promotes opportunities to increase SB Program awards
- Provides for nonrestrictive specifications and standards whenever possible
- Provides a point of contact to the SB specialist to assist in identifying SB Program opportunities

Small Business Advocates:

- Ensure that the SB Program is considered in all contracting processes
- Promote the concept of early planning and early coordination with the Small and Disadvantaged Business Utilization (SADBU) Office
- Serve as focal point within each area or commodity business unit for ownership of the Commander's SB Program
- Apprise the SADBU Office of problems with or obstacles to the use of SB sources and review proposed solutions or alternatives.
- Enables more effective promotion and participation of SB as prime contractors
- Advocates are appointed in each area or commodity business unit involved in the acquisition planning process

Contracting Officer:

- Publicizes opportunities to increase SB Program awards
- Coordinates small business opportunities with program managers, requirements personnel and SB specialist during acquisition planning stage
- Determines the appropriate North American Industry Classification System Code and related small business size standard and includes in solicitations
- Establishes reasonable and clearly understandable solicitation terms and conditions
- Establishes realistic delivery schedules to encourage SB participation
- Selects contract types and terms/conditions which reasonably allocate technical, cost, or schedule risks to the contractor
- Provides responses to inquiries from SBs to encourage competition
- Assists SB firms in understanding contractual terms and conditions
- Promotes awards to SBs and HBCU/MIs
- Encourages prime contractors to subcontract with SB concerns
- Provides appropriate acquisition requirements to the Small Business Administration Procurement Center Representative
- SB Program promotion part of their performance appraisals

ROLE OF THE PLAYERS (Cont'd)

*** Small Business Administration (SBA) Procurement Center Representative (PCR):**

- Reviews proposed acquisitions to recommend:
 - (1) set-aside of acquisition,
 - (2) new qualified small business sources, and/or
 - (3) breakout of components for competitive acquisitions
- Recommends alternate contracting method that might reasonably increase small business contracting opportunities
- Reviews proposed acquisition packages for a bundled requirement in accordance with 19.202-1(e)
- Reviews subcontracting plans
- Recommends SB Concerns for inclusion on solicitation mailing lists
- Possesses appeal authority
- Conducts periodic reviews of the contracting activity to insure it is complying with small business policies
- Sponsors and participates in conferences and training to counsel small businesses in obtaining Government contracts and doing business with the Government

*** SBA Breakout Procurement Center Representative:**

- Advocate for competition to cost savings to the Government
- Reviews acquisition packages for restrictions to competition and recommend breakout or other competitive strategies
- Possesses appeal authority

Procurement Technical Assistance (PTA) BA Breakout Procurement Center:

- Are a local resource available that can provide free assistance to business firms in marketing products and services to the Federal, state, and local governments.
- DoD PTAs are administered by the Defense Logistics Agency.
- Current listing of PTAs can be found at: <http://www.dla.mil/db/procurem.htm>

Small Business Development Center (SBDC) :

- Conducts research, counsels, and trains business people in a wide variety of business topics.
- Provides free counseling to all small business owners in starting up a business (i.e. Business Plans, Tax Planning, Accounting, Recordkeeping, Cash Flow Analysis, Loan Applications, Financing, Inventory Control, Sales Techniques, Patents) and Government Procurement (i.e. Bidmatch, Codes, Registrations, SBIR, Technical Assistance, Proposal Assistance, Laws, Subcontracting, Prime Contractors, CCR, SDB, 8(a), HUBZone, SDVOSB, WOSB etc.).
- Current listing of SBDCs can be found at: <http://www.asbdc-us.org>

*** The SBA is an independent Federal agency not affiliated with DoD**

SMALL BUSINESS GOALS/TARGETS

The DOD is committed to sustained Small Business Program performance improvement. To accomplish this, the DOD must ensure a greater level of Program understanding, accountability and senior management support. DOD annually measures itself and each Military department and Defense agency on overall Program performance against established metrics and holds senior leadership accountable for Program accomplishments.

Small Business Goal/Target is assigned as a percentage of a base comprised of the total business dollars awarded to all domestic business firms, excluding awards for Foreign Military Sales, work outside the Continental United States, awards to Higher Educational Institutions, Non-Profit Organizations, and Intergovernmental Awards hereto referred to as Total U.S. Business Base. The Small Business Reauthorization Act of 1997 increased the overall Government-wide procurement goal for small business from 20% to 23%. (P.L. 105-135)

Small Disadvantaged Business Goal/Target encompasses awards made under the 8(a) Program and direct awards to small disadvantaged business firms and represents a percentage against the Total U.S. Business Base. Congress has mandated a 5% goal. (P.L. 99-661)

HUBZone Goal/Target encompasses awards made under a HUBZone competitive or HUBZone sole source small business awards and is a percentage against the Total U.S. Business Base. The HUBZone Act sets the 3% government contracting goal for HUBZone small business by the year 2003. (Small Business Reauthorization Act of 1997) (P.L. 105-135)

Woman-Owned Small Business (WOSB) Goal/Target is a compilation of awards to woman-owned small businesses representing a percentage against the Total U.S. Business Base. The SB Reauthorization Act of 2000 (PL 106-554) allows federal agencies to "restrict competition" (permissive, not mandatory) when soliciting for supplies or services in industries where WOSB are underrepresented. Implementing regulatory guidance for WOSB Set-aside is still pending. There is an ongoing review being performed by the Small Business Administration. A 5% goal has been mandated by Congress for this category. (Federal Acquisition Streamlining Act of 1994) (P.L. 103-355)

Service-Disabled Veteran-Owned Small Business Goal/Target is a compilation of awards to service-disabled veteran businesses. It represents a percentage against the Total U.S. Business Base. There is pending legislation to allow for Service-Disabled Veteran-Owned Set-asides. A 3% goal has been mandated by Congress for this category. (P.L. 106-50).

Historically Black Colleges and Universities/Minority Institutions Goal/Target encompasses awards made to Historically Black Colleges and Universities and Minority Institutions to include Tribal Colleges and Hispanic Institutions. It represents a percentage of awards to Higher Educational Institutions (HEIs) rather than using the Total U.S. Business Base like the other SB Programs. A 5% goal is established for DoD under this category. (National Defense Authorization Act of 1987 and DOD Authorization Act of 1988) (P.L. 99-661)

SMALL BUSINESS SUBCONTRACTING GOALS/TARGETS

Note: Small Business Subcontracting Goals are assigned to those activities that retain contract administration functions for awards to large business firms that require subcontracting plans. This is largely non applicable to Army Materiel Command since most of the contract administration functions are delegated to the Defense Contract Management Agency in accordance with FAR 42.201. For the subcontracting goals, the base used is a percentage of total subcontracted dollars. The following goals are assigned:

Small Business Subcontracting Goal/Target is the total subcontracted dollars awarded to small business firms. The Government-wide target goal for this category is 42%. (P. L. 105-135)

Small Disadvantaged Business Subcontracting Goal/Target is the total subcontracted dollars awarded to small disadvantaged business firms. Congress has mandated a 5% goal. (P. L. 99-661)

Woman-Owned, Small Business Subcontracting Goal/Target is the total subcontracted dollars awarded to woman-owned small business firms. Congress has also mandated a 5% goal for this category. (P. L. 103-355)

HUBZone Subcontract Goal/Target is the total subcontracted dollars awarded to HUBZone, small business firms. This goal will increase yearly until 2003 when a 3% goal will be required. (P. L. 105-135)

Service-Disabled Veteran-Owned Small Business Goal/Target is the total subcontracted dollars awarded to service-disabled veteran businesses. Congress has mandated a 3% goal for this category. (P. L. 106-50)

Veteran-Owned Small Business Goal/Target is the total subcontracted dollars awarded to veteran businesses. Congress has mandated a 3% goal for this category. (P. L. 106-50)

SMALL BUSINESS CERTIFICATIONS

Small Business self-certification versus formal certification process – Some small business groups require self-certification for their business status when completing the solicitation representations and certifications clauses. Other small business groups require formal certifications in order to receive the benefits of their specific small business program. Contracting Officers should check Central Contractor Registration at <http://www.ccr.gov> to check business status, or contact the Small Business Administration (SBA) (<http://www.sba.gov>) .

- **SMALL BUSINESS STATUS:** Self-certification.
- **SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS STATUS:** Self-certification. An individual can confirm their status as a service-disabled veteran by contacting the National Archives and Records Administration at <http://www.archives.gov> to request certified copies of their Department Of Defense discharge papers that demonstrates a service-incurred disability. Additionally, if they have been adjudicated by the Department of Veterans Affairs as having a service-connected disability, they can contact their local VA regional office for appropriate documentation.
- **WOMAN-OWNED SMALL BUSINESS STATUS:** Self-certification. For a firm to self-certify as a WOSB with the federal government, the firm must meet the definition listed in FAR 19.001. To check on the requirements for WOSB certification, a firm can contact the following organizations regarding the procedures and benefits of being certified as a woman-owned business: Women's Business Enterprise National Council 1120 Connecticut Avenue, NW, Suite 950, Washington, DC 20036 Phone: (202) 872-5515 Fax: (202) 872-5505 Internet: <http://www.wbenc.org/> or the National Association of Women Business Owners Corp. 1411 K Street, NW, Suite 1300, Washington, DC 20005-3407 Phone: (202) 347-8686 Fax: (202) 347-4130 Internet: <http://www.nawbo.org>.
- **SMALL DISADVANTAGED BUSINESS (SDB) STATUS:** Formal certification is required by the SBA. SDB application certification can be obtained on SBA's SDB home page at <http://www.sba.gov/sdb/>. The Contracting Officer can verify a firm's SDB status by checking the Central Contractor Registration at <http://www.ccr.gov> or SBA's Dynamic Small Business Search at http://dsbs.sba.gov/dsbs/dsp_dsbs.cfm.
- **SBA's 8(a) Business Development (BD) PROGRAM STATUS:** Formal certification is required by the SBA. 8(a) SDB Electronic Application can be obtained on SBA's 8(a) BD home page at <http://www.sba.gov/8abd/>. The Contracting Officer can verify a firm's 8(a) status by checking the Central Contractor Registration at <http://www.ccr.gov> or the 8(a) status and graduation date at SBA's Dynamic Small Business Search at http://dsbs.sba.gov/dsbs/dsp_dsbs.cfm.
- **HUBZone STATUS:** Formal certification is required by the SBA. HUBZone Electronic Application can be obtained on SBA's HUBZone home page at <https://eweb1.sba.gov/hubzone/internet/>. The Contracting Officer can verify a firm's HUBZone status by checking the Central Contractor Registration at <http://www.ccr.gov> or SBA's Dynamic Small Business Search at http://dsbs.sba.gov/dsbs/dsp_dsbs.cfm or the Contracting Officer's HUBZone Gateway also located on SBA's HUBZone home page at <https://eweb1.sba.gov/hubzone/internet/>.

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